14 March 1988

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MEMORANDUM FOR: Distribution

SUBJECT:

Inter-Agency Meeting

TYPE OF MEETING	Economic Policy Council			
DATE	Wednesday, 16 March 1988			
TIME	1600			
PLACE	Roosevelt Room			
CHAIRED BY	Baker			
ATTENDEE(S) (probable)	NIO/Econ			
SUBJECT/AGENDA	Kansai Airport			
	Airbus			
PAPERS EXPECTED				
INFO RECEIVED	Per Cabinet Affairs			
DISTRIBUTION:				
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DDI Ch/NIC D/Exec Staff ES SDO/CPAS ER	Deane Hoffmunn			

THE WHITE HOUSE WASHINGTON

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(Ground Floor, West Wing)

RETURN TO:

THE WHITE HOUSE

WASHINGTON

March 14, 1988

MEMORANDUM FOR THE ECONOMIC POLICY COUNCIL

FROM:

EUGENE J. McALLISTER

SUBJECT:

Agenda and Papers for the March 16 Meeting

The agenda and papers for the March 16, 1988, meeting of the Economic Policy Council are attached. The meeting is scheduled for 4:00 p.m. in the Roosevelt Room.

The first agenda item will be a discussion of Kansai Airport and other public works projects in Japan. A paper prepared by the TPRG, explaining the issue and proposing that the Administration initiate a Section 301 case, is attached.

The second agenda item will be Airbus. Ambassador Yeutter would like to update the Council on the status of the negotiations to address Airbus pricing practices. A paper outlining the state of the negotiations is attached.

CONFIDENTIAL ATTACHMENTS

ECONOMIC POLICY COUNCIL

March 16, 1988

4:00 p.m.

The Roosevelt Room

AGENDA

- 1. Kansai Airport
- 2. Airbus

MEMORANDUM FOR THE ECONOMIC POLICY COUNCIL

FROM:

THE TRADE POLICY REVIEW GROUP

SUBJECT:

JAPAN MAJOR PROJECTS PROCUREMENT PRACTICES

RECOMMENDATION

The Trade Policy Review Group (TPRG) unanimously recommends that the President direct the U.S. Trade Representative to self-initiate an expedited Section 301 investigation on major project procurement practices of the Government of Japan (GOJ). An expedited procedure (60 days) should be employed in view of the extensive past bilateral consultations and the U.S. Government fact-finding that have already taken place on this issue.

When the investigation is completed, the EPC will be asked to review the investigation findings and the USTR's recommendation in this matter. The EPC will need to decide whether or not to recommend an unfairness determination and retaliation proposal to the President.

DISCUSSION

Over the next fifteen years, the GOJ will spend over \$200 billion on key major projects. Public works spending is the lion's share of the domestic demand stimulation program that the United States has urged the GOJ to undertake. The GOJ is channeling much of this spending through its relationships with local government and private sector organizations. At present, GOJ procedures and policies work with private sector practices to effectively close this market —the world's largest for major projects — to all foreign competition.

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The "designated bid and tender system" will be used on all GOJ projects. Main features of this system include:

- advail agreement on specifications between GOJ-affiliated project engineers and Japanese private bidders (who often make equity contributions to buy into a project in its formative stages);
- o <u>no public notice</u> of major project elements or advertising of calls for bids;
- o a requirement for <u>prior experience in Japan</u> as a prerequisite for being designated to bid on contracts;
- o informal division of contracts through <u>collusive bidding</u> (the "dango" is a well-known practice winked at by the GOJ);
- o denial of full access to <u>specifications</u>: lack of any appeals mechanism on specifications or bidding decisions; and
- o <u>no public notice</u> of the designated bidders list; no equal chance to pursue subcontractor relationships.

NEGOTIATIONS TO DATE

Kansai Airport Talks

Using the Kansai International Airport project (KIAC) as a first step because of its immediate commercial importance (approximately \$8 billion), we gained GOJ agreement to procedures which accept international experience in evaluating potential bidders, and which provide minimal transparency and time necessary for American companies to submit competitive bids. We had made clear our expectation (endorsed by then-Prime Minister Nakasone in his meeting with the President in September 1987) that these procedures would be applied to "similar major projects." After lengthy negotiations, the Japanese unilaterally decided that the Kansai procedures would apply only to one additional project (Trans Tokyo Bay Bridge). The GOJ has refused since then to apply these procedures to public works that it directly manages.

On November 5, 1987, the TPRG recommended the initiation of a 301 investigation to the EPC, but EPC consideration of the issue was deferred pending the results of Commerce Secretary Verity's visit to Tokyo in mid-November.

During that visit, Foreign Minister Uno issued a statement that there would be no changes in existing procedures to accommodate foreign bidders on government projects, and rejecting further bilateral negotiations on the subject. The GOJ did, however, offer to engage in multilateral talks on construction services procurement in the context of the New Round.

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On the basis of Secretary Verity's report, the TPRG on November 25 again recommended 301 action to the EPC. EPC consideration of the issue was deferred in view of the impending visit of Prime Minister Takeshita.

On December 22, the continuing resolution on the FY88 budget was enacted, containing the Brooks-Murkowski amendment (see Appendix B), banning Japanese controlled firms and Japanese products (except construction equipment) from USG-funded construction contracts in the U.S. The amendment passed overwhelmingly.

The Takeshita Proposal and Follow-up

In preparation for the Takeshita visit, the Japanese Embassy delivered a proposal (Appendix A) from the Prime Minister. The proposal has two parts:

- a willingness to make certain <u>arrangements</u> so that foreign companies could be designated to bid on the basis of non-Japanese experience; and
- 2) a large enough group of special projects for foreign companies to acquire enough experience in Japan to enable them to enter into Japanese public works under the existing procurement system.

The proposal essentially applies "special measures" to a list of government-run projects with the object of providing American companies with sufficient Japan-based experience to let them compete for later contracts, under existing procedures. The Japanese proposal leaves the discriminatory designated bid and tender system intact.

On January 21, 1988, Secretary Verity responded that the Takeshita proposal met our minimum requirements to return to the negotiating table, i.e. that access to government-run projects would be on the table. He advised the GOJ that the offer leaves "so many questions unanswered that it is not possible at this point to determine whether it contains all the elements necessary to resolve this problem."

WHERE WE STAND NOW

After negotiations in Tokyo the week of February 15 and in Washington March 1-8, we have the following to bring to the Economic Policy Council:

The Japanese Strer

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A. List of Trojects

The Japanese list contains seven projects to be covered by the special procedures:

- 1. Haneda Airport Expansion Total project value: Y570 billion; available for U.S. bidding under special measures: Y110 billion (\$846 million)
- 2. Hiroshima Airport
 Total project value: Y50 billion in runway construction;
 available for U.S. bidding under special measures: Y40
 billion (\$307 million)
- 3. Akashi Straits Bridge
 Total project value: Y383 billion (Y36 billion already commissioned); available for U.S. bidding under special measures: Y284 billion (\$2.2 billion)
- 4. Ise Bay Highway
 Total project value: Y115 billion; available for U.S.
 bidding under special measures: Y88 billion (\$677
 million)
- 5. Metropolitan Expressway
 Total project value: Y2,009 billion (Y27 billion already
 commissioned); available for U.S. bidding under special
 measures: Y66 billion (\$508 million)
- 6. Minato Mirai 21 Project
 Total project value: Y85 billion; available for U.S. bidding under special measures: Y27 billion (\$208 million)
- 7. Minsai Science City

 Mital project value: Y713 billion; available for U.S.

 Hidding under special measures Y427 billion (\$3.28

 Billion)

Total projects covered by the Japanese offer: Y3,925 billion (\$30.2 billion); amount available for U.S. bidding under special measures: Y1,042 billion (\$8 billion).



U.S. Objections

The list of projects:

- -- is too small when compared to the very open U.S. market;
- -- leaves out precisely those components -- terminals, telecommunications, information buildings -- where U.S. companies are most competitive, and restricts us to earthmoving and concrete pouring; and
- offers too limited a range of experience to allow any representative segment of the U.S. industry to meet the test for Japanese experience required to qualify for future projects;
- -- does not provide sufficent information to allow us to identify significant commercial opportunities for U.S. companies; and
- -- could be construed as our acceptance of a permanent exclusion of non-covered segments of the U.S. construction industry from the Japanese construction market.

B. Special Measures

Existing procedures would be changed in the following ways:

- 1. Open registration period.
- Foreign experience would be accepted on an equal basis with Japanese experience for qualifying firms to bid.
- 3. Summaries of projects and order of bids would be available.
- 4. Losing bidders would be given an explanation on request.
- 5. Ministry of Construction will provide a status report on license applications after 120 days.
- 6. Monitoring through the U.S. Embassy for covered projects only.

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U.S. Objections:

The Japanese offer is deficient on the following points:

- -- it provides none of the transparency we are guaranteed under the Kansai procedures.
- -- loopholes in two areas where the U.S. is competitive --equipment and project design and management. Procedures on goods fall short of Government Procurement Code. Excludes consulting contracts which will be done "in house".
- -- qualifications required for invitations to bid are unclear and discriminatory. The Japanese delegation confirmed our understanding that even though a firm is qualified, it might not be designated.
- -- Monitoring procedures are on a request only basis.

The bottom line: the Japanese offer is not sufficient to give any significant segment of the U.S. construction industry and related equipment suppliers the experience base which would allow us to compete on subsequent projects under the existing system.

U.S. Counter-Offer

The U.S. suggested three options for expanding the list to provide sufficient breadth and depth of experience for U.S. companies:

- -elimination of carve outs on the seven projects
- -addition of new projects
- -generalization of procedures to include all major projects all three options were rejected.



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CONGRESSION VIEWS

The Congress has become increasingly frustrated by Japanese recalcitrance and has shown substantial support for Administration objectives on this issue. Among the measures which they have taken:

- o Brooks-Murkowski amendment to the Continuing Resolution
- o A similar amendment to the Airports and Airways Act
- o Trade Bill provisions mandating self initiation of a 301 investigation
- o Stark amendment to pending tax legislation denying depreciation deductions for construction performed by Japanese firms.

(See Appendix B for full description of the measures.)

PRIVATE SECTOR VIEWS

Our industry is giving priority attention to this market, not only to participate in projects in Japan, but also to gain access to construction projects funded by Japan's rapidly-growing official assistance to developing countries. Individual firms and trade associations see no chance to break into this market without significant U.S. Government action. Consequently, they have supported both the Administration's steadily increasing pressure on the GOJ and Congressional actions. As recently as March 10, relevant trade associations have repeatedly urged the Administration to self-initiate a 301 investigation.

TIMING

- o Expedited 301 investigation could escalate pressure on Japanese negotiators to make good Takeshita's promise
- o Could deflate Congressional sentiment for punitive action as trade bill debate continues
- o 60 day investigation period should get us through the Trade Bill conference
- o Assuming the investigation begins by mid-March, with a 60-day period for USTR consideration, and up to a 21-day period for Presidential determination, it could be completed by late May, well in advance of the Summit (June 19).



RETALIATION

Both the TPRG and the EPC previously reviewed the legal basis for 301 action against Japan on this issue in September 1987. The GOJ actions in this case violate the U.S.-Japan Friendship, Commerce, and Navigation Treaty of 1952. These measures are also actionable as a matter of domestic U.S. law under Section 301 of the Trade Act of 1974.

If there is a finding of unfairness, the TPRG will develop a list of retaliation options for the President's review in conjunction with his determination. Rough injury estimates at this point suggest retaliation amounts in the \$300-750 million range. The retaliation calculation would factor in the value of the Brooks-Murkowski sanctions that are in place until October 1, 1988. In addition to the regular consideration of punitive tariffs, the TPRG could study more reciprocal measures affecting construction and related services.

Appendices

- A -- Prime Minister Takeshita's Proposal
- B -- Congressional Action on Japanese Major Projects



APPENDIX A

Prime Minister Takeshita's Proposal
Major Public Works

1. As regards procurement procedures for public works (works to be commissioned by the government or governmental agencies), each country has it own established system. The Japanese system is based upon the non-discrimination principle which is applicable domestically as well as externally. There is a fact, however, that lack of sufficient records/experiences by foreign companies in the Japanese private sector has made it difficult for them to enter into the Japanese public works procurement.

Based upon the shared recognition of these facts, the Japanese Government is, with an objective to facilitating entry of foreign construction firms into the Japanese public works, prepared to make certain arrangements so that foreign companies with intention and capabilities necessary to complete the works involved may be designated in the bidding of those projects to be listed in due course, even if they do not have records/experiences in Japan. This list is sufficient for foreign companies to acquire enough experiences that will enable them to enter into the Japanese public works under the existing procurement system.

The Japanese Government is also prepared to consider, to the extent possible, flexible application of procedures adopted in the ordinary public works procurement in Japan.

In order to ensure effective implementation of the above measures, the Japanese side will be, if any problem arises, prepared to consult with the U.S. side.

- 2. In parallel with these measures, the Japanese Government will also be prepared to discuss at an appropriate multilateral forum, ways to enhance international exchanges of construction services.
- 3. These measures will be implemented on a reciprocal basis. With regard to the U.S., these measures will be practiced upon agreement between the two Governments, but will be suspended, should discriminatory measures against Japan continue even after October 1st of this year.

APPENDIX B



CONGRESSIONAL CONSIDERATIONS

A. Procurement Sanctions Legislation

The <u>Brooks-Murkowski</u> amendment to last year's Continuing Resolution now bars Japanese products, and Japanese or Japanese-controlled contractors, from all public construction or public works projects funded by monies appropriated for FY 1988 or earlier years. This covers Federal spending and grant monies.

By law, these sanctions against Japan can only be removed if:

- (1) the GOJ removes barriers to U.S. products and services in major construction projects; and
- (2) Japan submits to the President or to USTR evidence of removal of the barriers; and
- (3) USTR verifies such removal by independent investigation, and reports to Congress at least 30 days before removing sanctions.

Brooks-Murkowski applies in addition to the existing Buy American requirements for Federal and Federally-funded public works.

B. Murkowski Amendment to Airport-Airways Act

An amendment to the Airport and Airway Safety and Capacity Expansion Act of 1987, enacted late December 1987, bars use of airport and airway trust fund monies for any project which uses any product or service of a foreign country during any period in which that foreign country is on a list to be maintained by USTR. This list, due first on Nov. 29, 1988, must include all countries that USTR determines deny fair and equitable market opportunities (FEMO) for U.S. bidders, products or suppliers in major public construction projects. This law is in effect through 1992.

C. Trade Bill Provisions

The House and Senate trade bills contain nearly-identical provisions, each of which mandates self-initiation of a Section 301 investigation -- no later than 90 days after enactment -- concerning acts, policies or practices of the GOJ (and GOJ-controlled entities) with respect to barriers in Japan to the offering or performance by U.S. persons of architectural, engineering, construction, and consulting services in Japan.

We have conveyed our strong objection to these provisions on a number of occasions. Because of the overwhelming support for it on the Hill, we have no chance of obtaining its withdrawal in the absence of self-initiation of a section 301 case.

Neither of these provisions prescribes the conditions for the investigation to be initiated or the requirements (if any) for any action by the President at the conclusion of the investigation. The general provisions of Section 301 would apply.

D. Stark Bill (H.R. 3888)

H.R. 3888, introduced by Rep. Fortney Stark in January, would deny tax exempt industrial development bonds for projects using Japanese construction services, and deny accelerated depreciation for buildings constructed using over 1 percent Japanese construction services. This is the first bill to attack private construction, and would clearly violate the U.S.-Japan Friendship, Commerce and Navigation Treaty of 1952. However, there is no support in the Senate for this approach (naming Japan and using the tax code).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

EXECUTIVE OFFICE OF THE PRESIDENT WASHINGTON 20506

March 14, 1988

MEMORANDUM FOR MEMBERS OF THE EPC

SUBJECT: Airbus

The United States has been negotiating with France, Spain, the United Kingdom, the Federal Republic of Germany, and the European Commission for over a year in an attempt to resolve differences on the provision of government support, both financial and non-financial, to Airbus. Ambassador Yeutter is scheduled to meet with his Ministerial-level counterparts on Friday, March 18, in Lake Konstanz, Germany to review the status of the negotiations.

Due to upcoming French Presidential elections, as well as continuing significant differences on a number of substantive matters, final agreement is not expected at Lake Konstanz. Rather, Ambassador Yeutter will attempt to determine whether a basis exists for continued negotiations that can lead to a mutually satisfactory agreement after the French elections in May.

Additional background information on this issue is provided below.

Negotiating History

The EPC last reviewed this issue in February 1987. At that time, the EPC commissioned a study by the Department of Commerce on the economic effects of European government subsidies for Airbus (Executive Summary attached). The EPC also directed the U.S. Trade Representative to seek negotiations to strengthen the existing GATT Agreement on Trade in Civil Aircraft as a way to curb European government practices, both financial and nonfinancial, in support of Airbus.

The United States began active negotiations in the GATT Aircraft Committee in March 1987 in an effort to improve GATT disciplines on government intervention in large civil aircraft development, production, and marketing. However, in June 1987, the Airbus governments committed over \$3.3 billion in new funds to launch the A330/A340 program. The A340 is in direct competition

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and Boeing and led to a ministerial-level meeting between Ambassador Yeutter and his European counterparts in London in late October. It was agreed at that time that negotiations should be carried at on a purely bilateral basis to expedite the process, although any negotiated settlement would be incorporated into the GATT Agreement on Trade in Civil Aircraft. Since the October 1987 ministerial meeting, six bilateral negotiating sessions have been held, with the U.S. side being led by Ambassador Smith.

Status of Negotiation

Full agreement on interpretive language to existing provisions of the GATT Aircraft Agreement that govern government aircraft marketing interventions (e.g., inducements, offset demands and pressures to select national vendors) has been reached. However, we are still a long way from an agreement on disciplines over direct government financial supports for civil aircraft. This is due in part to major philosophical differences. The Europeans argue that it is normal for their governments to provide direct financial support for key industries. The United States argues such subsidies, by definition, undermine the trading system and should not be provided. The Europeans have also stressed their emotional and political commitments to Airbus as a symbol of "successful" European cooperation in the high technology area.

With respect to specific subsidy disciplines, the Europeans to date have indicated they are willing to avoid providing "production" supports (as opposed to development supports) for future aircraft programs including derivatives of current aircraft. They are also willing to commit to do economic viability studies in response to any new requests from the Airbus consortium for supports for new aircraft programs.

Beyond these two points, however, disagreement remains on five key points:

- 1. The Europeans are unwilling to commit to phase down their development supports over any specified period of time, although they have indicated their desire to reduce their level of participation.
- 2. The Europeans are unwilling to commit to more stringent conditions on providing future development support such as by charging a positive real interest rate or requiring repayment on a fixed schedule. Currently, repayment is on a royalty per plane sold basis which leaves the risk of any program with the government.

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- 3. With spect to transparency, the Europeans have indicated the say would be willing to provide information on the ame of their supports, but will not provide information on how or if it is repaid. They are also unwilling to require Airbus consortium companies and Airbus Industrie to publish public accounting data, consistent with international standards, on their Airbus business.
- 4. The Europeans insist on an escape clause to any subsidy disciplines if needed to bail out Airbus or one of its consortia partners. Although we are willing to consider such an escape clause, there is no agreement on the conditions for the invocation of such a clause. The Europeans argue that "unusual economic conditions," "extraordinary exchange rate movements" and avoiding undue concentration of the industry (Boeing monopoly) are rationales for extra government support. The U.S. view is that after 18 years, Airbus cannot be insulated from the normal risks of doing business, such as exchange rate movements, if it is going to make investment and marketing decisions on a commercial basis.
- 5. The Europeans insist on a "non-aggression" clause under which the U.S. government would agree not to self-initiate trade cases, and U.S. airframe companies would also waive their rights to bring such cases.

In addition, the degree to which any agreed subsidy disciplines would apply to the A330/340 program is unclear, with the Europeans arguing that this is a grandfathered program.

Finally, the Europeans would like to shift the entire focus of the negotiation away from disciplines on subsidies to disciplines on adverse trade effects. In particular, they would like to institute some type of pricing discipline, a proposal favored by McDonnell Douglas but for which there is no consensus in the TPRG.

Ambassador Yeutter is meeting with key industry figures in the afternoon of March 15 to receive the lastest industry views. At this time, it appears that the general U.S. industry view is to keep negotiating rather than to take confrontational trade actions that risk a trade war. Motivations behind individual company's positions vary. The two engine companies (GE and Pratt and Whitney) see both Airbus and the two U.S. airframe manufacturers as customers whom they do not wish to offend; anything but a peaceable settlement would be disruptive to their production and marketing plans.

Boeing has recently increased sales in Europe, the U.S. and third countries, although their 7J7 150-seat aircraft, which was to compete with the advanced technology Airbus A320 that enters service in a few weeks, has been indefinitely suspended. Therefore,

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Boeing har for the time being urged caution -- at least until the next til that it loses a major domestic sale to Airbus.

McDennell Douglas has not sold an MD-11 aircraft since their initial launch sales customers a year ago. They have argued that Airbus is unfairly pricing the A340. However, ongoing negotiations between Airbus and McDonnell Douglas for possible cooperation or collaboration on several sizes of aircraft has put them in a wait and see mode. These negotiations with Airbus had reportedly been languishing, but the European governments have recently provided a major push to Airbus to negotiate a joint venture.

Attachments

THE ECONOMICS OF AIRBUS INDUSTRIE:
A STUDY FOR THE ECONOMIC POLICY COUNCIL



EXECUTIVE SUMMARY

On February 13, 1987 as part of its review of the Airbus issue, the Economic Policy Council asked for an economic analysis of Airbus, including an examination of the subsidy question. This study was prepared by the International Trade Administration of the Department of Commerce. A private consultant was used to assist in preparing this study. The Department of Transportation provided special studies.

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Key findings and conclusions are:

Economic Viability of Airbus Programs

- . Existing Airbus programs, the A300 and A310 have already lost approximately \$6 billion and are not unlikely to reach a breakeven point in the programs.
- . The A320 program launched in 1984 (first deliveries in 1988) is unlikely to recoup its costs and could lose from \$4 to \$7 billion dollars.
- . The A330/A340 program, launched in May 1987 (first deliveries scheduled for 1992) is also unlikely to recoup its costs and could lose from \$4 to \$10 billion.

Government Subsidies and Support

- . To date the governments of France, West Germany and the United Kingdom have provided a total of \$7.3 billion in support. About \$250 million has been repaid. Another \$3.1 billion has been committed for the A330/A340 program.
- . If interest were accruing on the government support at normal commercial rates, the Airbus companies' books would show some \$15 billion in principal and interest owed to their governments.
- . Based only on announced government support, subsidies for the A320 aircraft could range from \$1.6 to \$2.5 million per aircraft and \$1.6 to \$2 million for the A340.
- Announced government support for the A320 and A330/A340 programs appears to be insufficient to cover the potential losses from these programs. If the governments provide additional support as they did on the A300/A310 programs, actual subsidies could reach \$8 million per aircraft for the A320 and \$9 million for the A340.

Pricing Practices

. According to information obtained by the consultant, some Airbus price for the A320 have been 30 percent or more below cost and

price of the the A340 25 percent below cost. It is estimated that both aircraft models over their production lives will be marketed a verage prices that are below cost.

. Airbus pricing practices appear directed to maximize quantities sold and market share rather than revenues.

Airbus Practices in The Future

- . The overall revenues and profits of the Airbus companies do not appear sufficient to cover the potential losses from the Airbus programs.
- Additional subsidies will be expected to offset the potential losses on the new Airbus programs. The Airbus Governments are likely to provide the additional support since as justified by the significant economic, technical and political benefits flowing Airbus.
- Given the likelihood of continued government support, Airbus will continue to develop new aircraft whether commercially viable or not and will follow pricing strategies designed to maximize units delivered. By artificially depressing market prices, Airbus may be able to discourage U.S. manufacturers from bringing out new, advanced technology aircraft which would compete with the new Airbus programs.

Effects on U.S. Industry

- . In the absence of government supports Airbus would not exist and the European share of market would be lower. The effects of any market share loss to date are relatively limited since the current Airbus share is about equal to the historical European share before Airbus.
- . Assuming Airbus continues its current practices, in particular selling below cost, U.S. manufacturers will see their market share eroded and they will be forced to reduce their prices to compete.
- Lower prices could discourage the introduction of new, high technology aircraft by the U.S. manufacturers for two reasons: (1) U.S. manufacturers need profits to generate the \$2 to \$4 billion needed to launch a new program, and (2) lower prices reduce the profitability of new programs.
- . The ultimate effect of the Airbus practices could be to drive one U.S. airframe manufacturer out of the civil aircraft business. Reductions in the profitability of the U.S. manufacturers could make them dependent upon the U.S. government or foreign investors for the financial resources necessary to launch new aircraft. The offset for foreign investment would be technology transfer and a larger share of the work.